



**FILED**  
Aug 25 2008, 9:37 am  
*Kevin Smith*  
**CLERK**  
of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**STEPHEN R. CARTER**  
Attorney General of Indiana  
Indianapolis, Indiana

**KELLY A. MIKLOS**  
Deputy Attorney General  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

CURTIS PALMER, )  
)  
Appellant-Defendant, )  
)  
vs. ) No. 79A02-0803-CR-204  
)  
STATE OF INDIANA, )  
)  
Appellee-Plaintiff. )

APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Judge  
Cause No. 79D03-0703-FB-00013

**AUGUST 25, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

Curtis Palmer appeals the eight-year sentence imposed after he pleaded guilty to possession of a schedule II controlled substance as a class D felony and to being an habitual substance offender.

We affirm.

The sole issue for our review is whether the trial court erred in sentencing Palmer.

In March 2007, the State charged forty-one year-old Palmer with two counts of dealing in a schedule II controlled substance as class B felonies; conspiracy to commit dealing in a schedule II controlled substance as a class B felony; possession of a schedule II controlled substance as a class D felony; and maintaining a common nuisance as a class D felony. The State also alleged that Palmer was an habitual substance offender.

Palmer pleaded guilty to possession of a controlled substance as a class D felony and to being an habitual substance offender. At the sentencing hearing, the trial court found the following aggravating factors: 1) Palmer's extensive criminal history; 2) Palmer violated the terms and conditions of his probation; and 3) Palmer received the benefit of reduced charges. The court also found the following mitigating circumstances: 1) Palmer pleaded guilty and took responsibility for the crime; and 2) Palmer's imprisonment would result in undue hardship to his disabled live-in girlfriend. The court sentenced Palmer to three years, enhanced by five years because of the habitual substance offender adjudication, for a total sentence of eight years.

The sole issue for our review is whether the trial court erred in sentencing Palmer. At the outset we note that because the offenses in this case were committed after the April 25, 2005, revisions to the sentencing statutes, we review Palmer's sentence under

the advisory sentencing scheme. *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). When evaluating sentencing challenges under the advisory scheme, we first confirm that the trial court issued the required sentencing statement, which includes a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* at 490. If the recitation includes a finding of aggravating or mitigating circumstances, the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be aggravating or mitigating. *Id.*

So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion in failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating or mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

#### I. Improper Aggravating Circumstance

Palmer first argues that the trial court erred in finding as an aggravating circumstance that he received the benefit of reduced charges. Our review of the sentencing hearing transcript reveals that the trial court listed Palmer's benefit under the plea agreement as an aggravating factor, but also found Palmer's acceptance of responsibility and guilty plea to be mitigating circumstances. We agree with the State that the trial court was simply recognizing that the guilty plea carried both positive and negative sentencing considerations.

We have previously explained that a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Here, pursuant to the terms of the guilty plea, the State dismissed three class B felony

charges and one class D felony charge, leaving Palmer with a substantial benefit. Under these circumstances, the trial court did not abuse its discretion.

We further note that even if this were an improper aggravator, we would affirm Palmer's sentence because other valid aggravators exist. *See Walter v. State*, 727 N.E.2d 443, 447 (Ind. 2000) (holding that even when a trial court improperly applies an aggravator, a sentence enhancement may be upheld if other valid aggravators exist). Specifically, Palmer has a sixteen-year criminal history that includes misdemeanor convictions for three counts of petty theft, sexual battery, battery, petty theft with a prior conviction, public intoxication, trespass, and possession of marijuana. He also has felony convictions for two counts of petty theft with a prior, forgery, and possession of marijuana with a prior conviction. In addition, Palmer was on probation at the time he committed the offenses in this case and has had three petitions to revoke filed against him. These aggravators support Palmer's enhanced sentence.

## II. Inappropriate Sentence

Palmer also argues that his sentence is inappropriate because of the undue hardship it places on his disabled girlfriend. First, this is not a proper consideration in determining whether a sentence is inappropriate. Rather, undue hardship is a mitigating factor, which the court found in this case. Further, even if it was a proper consideration, Palmer's sentence is not inappropriate. With regard to the character of the offender, Palmer has an extensive sixteen-year criminal history that includes nine misdemeanor convictions and four felony convictions. He was also on probation at the time he

committed the offenses in this case and has had three petitions to revoke filed against him. Palmer's prior contacts with the law have not caused him to reform himself.

With regard to the nature of the offense, Palmer was convicted for possessing his disabled girlfriend's methadone tablets. We agree with the State that he appears to have taken advantage of his girlfriend's disabilities to support his criminal endeavors. Based upon our review of the evidence, we see nothing in the character of this offender or in the nature of this offense that would suggest that Palmer's sentence is inappropriate.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.